

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(PHILADELPHIA)**

IN RE:

James E. Weaver, Jr. and Diane D Weaver
Debtors

CHAPTER 13

CASE NO.: **19-11007-elf**

HEARING DATE: February 25, 2020

TIME: 11:00 AM

LOCATION: COURTROOM #1

**TRUMARK FINANCIAL CREDIT UNION, FOR RELIEF FROM THE AUTOMATIC
STAY PROVISIONS OF 11 U.S.C. § 362(A) TO PERMIT MOVANT TO COMMENCE
OR CONTINUE FORECLOSURE PROCEEDINGS ON 28 HILLBROOK CIRCLE,
MALVERN, PA 19355**

AND NOW COMES, TruMark Financial Credit Union (“Movant”), by and through its attorneys, Hill Wallack LLP, and respectfully represents as follows:

1. This Motion (the “Motion”) is filed by Movant for relief from the automatic stay provisions of 11 U.S.C. §362(a) to permit Movant to continue its foreclosure on real property located at 28 Hillbrook Circle, Malvern, PA 19355 (the “Mortgaged Premises”).

2. On or about June 26, 2014, Diane D. Weaver (“Borrower”) executed and delivered to Movant a Promissory Note (“Promissory Note”) in the principal amount of \$273,900.00. A true and correct copy of the Promissory Note is attached hereto and made a part hereof as Exhibit “A.”

3. To secure the obligations under the Promissory Note, Borrower and James E. Weaver, Jr. (known collectively as “Debtors”) granted Movant a valid, enforceable, and recorded first lien and mortgage (the “First Mortgage”) on the Mortgaged Premises, all of the terms of which are incorporated herein by reference as if fully set forth at length, which the Mortgage was thereafter recorded in the Chester County Recorder of Deeds Office on July 1, 2014 in Book 8946 at Page 135 as Document No. 11353045. A true and correct copy of the Mortgage is attached hereto and made a part hereof as Exhibit “B.”

4. Thereafter, on or about March 12, 2016, Debtors executed and delivered to Movant a Home Equity Revolving Credit Mortgage (“HERCM”) in the principal amount of \$28,000.00 on the Mortgaged Premises, all of the terms of which are incorporated herein by reference as if fully set forth at length, which the HERCM was thereafter recorded in the Chester County Recorder of Deeds Office on March 29, 2016 in Book 9283 at Page 2096 as Document No. 11464763. A true and correct copy of the HERCM is attached hereto and made a part hereof as Exhibit “C.”

5. On February 19, 2019, Debtors filed petition for relief under Chapter 13 of the United States Bankruptcy Code.

6. The Debtors listed the current value of the Property in Schedule A/B in the amount \$341,301.60.

7. As of the Petition Date, Movant is the holder of two (2) secured claims. Proof of Claim 8 filed March 21, 2019, regarding the First Mortgage is in the amount of \$272,664.74 with pre-petition arrears due in the amount of \$19,172.93 together with additional legal fees and costs and taxes due and payable on the Mortgaged Premises. Amended Proof of Claim 9, filed April 12, 2019, regarding the HERCM is in the amount of \$30,089.66 with pre-petition arrears due in the amount of \$2,375.10 together with additional legal fees and costs and taxes due and payable on the Mortgaged Premises.

8. The current monthly payment on the First Mortgage is \$1,873.07.

9. The current monthly payment on the HERCM is \$224.00.

10. The Debtors’ Plan was confirmed September 17, 2019. The Plan states the Debtors are to make regular payments directly to the Creditor.

11. The Debtors are currently in arrears post-petition for their failure to pay the post-petition payments under the First Mortgage due August 1, 2019 through January 1, 2020 for a total due in the amount of \$11,238.42.

12. The Debtors are currently in arrears post-petition for their failure to pay the post-petition payments under the HERCM due August 1, 2019 through January 1, 2020 for a total due in the amount of \$1,344.00.

13. Consequently, Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1) as the Debtors have defaulted on the confirmed Chapter 13 Plan.

WHEREFORE, TruMark Financial Credit Union respectfully requests that this Court enter an Order granting relief from the automatic stay provisions of 11 U.S.C. § 362(a) to allow Movant to proceed in its foreclosure of the Mortgaged Premises, to name the Debtor in the foreclosure suit solely for the purpose of foreclosing their interests in the Mortgaged Premises, and to allow Movant, or any other purchaser at the Sheriff's Sale, to take any legal action necessary to gain possession of the Mortgaged Premises.

Respectfully submitted,

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